

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

September 21, 2004

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Ortega, J., Mallano, J. and S. Beaux, Deputy Clerk.

Each of the following:

B167352 People v. Vasquez
B168484 People v. Ortega
B169822 People v. Ramirez, Andrew
B170340 People v. Echeverria
B170757 People v. Sylve
B172477 People v. Ramirez, Rodrigo
B175834 Cynthia R. v. Superior Court; DCFS
B176406 Eric R. v. Superior Court; DCFS

Argument waived, cause submitted.

B164479 Espino
 v.
 White Consolidated Industries, Inc.

Merits:

Argued by S. Thomas Todd for appellant and by Gerald M. Serlin for respondent. Cause submitted.

B171572 Hufnagel
 v.
 Lehrer-Graiwer

Merits:

Argued by Daniel J. Koes for appellant and no appearance for respondent. Cause submitted.

DIVISION ONE (Continued)

B170425 People
 v.
 Caldwell

Merits:

Argued by Stephen M. Lathrop for appellant and by Michael W. Whitaker, Deputy Attorney General, for respondent. Cause submitted.

B169989 Friend
 v.
 Paisely Park Enterprises, Inc. et al.

Merits:

Argued by Kristal Gunn for appellant and by Traci Bransford Bullock respondent in propria persona. There being no appearance by respondent Paisely Park Enterprises. Cause submitted.

B163386 Williams et al.
 v.
 Gerstein et al.

Merits:

Argued by Douglas F. Galanter for appellants and by Mark M. Hathaway for respondents. Cause submitted.

B169360 People
 v.
 Magdalendo

Merits:

Argued by Jerome McGuire for appellant and by David E. Madeo, Deputy Attorney General, for respondent. The court grants appellant leave to file supplemental *Blakely* brief. Cause submitted.

DIVISION ONE (Continued)

B168809 People
 v.
 Smith

Merits:

Argued by Jerome McGuire for appellant and by Beverly K. Falk, Deputy Attorney General, for respondent. Cause submitted.

B170888 People
 v.
 Safieh

Merits:

Argued by Steve Escovar for appellant and by Robert S. Henry, Deputy Attorney General, for respondent. Cause submitted.

B173974 Curtis T.
 v.
 County of Los Angeles

Merits:

Argued by Steven C. Glickman for appellant and by Elizabeth M. Kessel for respondent. Appellant shall file letter brief by October 1, 2004 and respondent shall reply by October 12, 2004. Cause shall be submitted upon the filing of respondent's reply.

Court recessed.

Court reconvened at 10:39 a.m.

Present: Spencer, P.J., Ortega, J., Mallano, J. and S. Beaux, Deputy Clerk.

DIVISION ONE (Continued)

B168464 Rice
 v.
 Yoho

Merits:
Argued by Kenneth R. Zuetel, Jr. for appellant and by Robert Fisher for respondent. Cause submitted.

B169604 McManus et al.
 v.
 Welsh et al.

Merits:
Argued by Simon Robert Hiller for appellants and by Elliot S. Blut for respondents. Cause submitted.

B163831 Hanna
 v.
 South Coast Air Quality Management District et al.

Merits:
Argued by Joe B. Cordileone for appellant and by Lloyd W. Felver for respondents. Cause submitted.

Court adjourned.

B173339 People (Not for Publication)
 v.
 Donell R. Bell

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
 Vogel (Miriam A.), J.

DIVISION THREE

B166522 Thomas Escobar, etc. (Not for Publication)
 v.
 University of Southern California

The judgment is reversed. Appellant(s) to recover costs.

Kitching, J.

We concur: Klein, P.J.
 Aldrich, J.

DIVISION FOUR

B152959 Boeken (Certified for Publication)
 v.
 Philip Morris Incorporated

The judgment is affirmed in all respects except the amount of punitive damages. The judgment is modified to reduce the punitive damage award to \$50 million, provided Boeken files a timely consent to such reduction in accordance with rule 24(d), California Rules of Court. If no such consent is filed within the time allowed, the judgment is reversed with regard to the amount of punitive damages only, and remanded for a new trial solely upon that issue. Both sides are to bear their own costs.

Hastings, J.

We concur: Epstein, Acting P.J.
 Curry, J.

September 21, 2004 (Continued)

DIVISION FOUR (Continued)

B166489 People v. Trujillo (Not for Publication)

The judgment is affirmed.

Grimes, J. (Assigned)

We concur: Hastings, Acting P.J.
 Curry, J.

B172569 Los Angeles County, D.C.S. (Not for Publication)
v.
David C.

The appeal is dismissed.

Grimes, J. (Assigned)

We concur: Hastings, Acting P.J.
Curry, J.

B167344 People (Not for Publication)
v.
Sidić

The matter is reversed in part and remanded for resentencing, a new restitution order and recalculation of credits in accordance with the views expressed in this opinion; in all other respects the judgment is affirmed.

Epstein, Acting P.J.

We concur: Hastings, J.
Curry, J.

DIVISION FIVE

B172230 Cynthia Hart (Not for Publication)
v.
Thomas Hart

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur: Grignon, Acting P.J.
Mosk, J.

B168759 Maria Alvarado (Not for Publication)
v.
Jose Alvarado

The judgment is affirmed. Respondent(s) to recover costs.

Mosk, J.

We concur: Turner, P.J.
Armstrong, J.

B169282 Donato Garcia (Not for Publication)
v.
County of Los Angeles

The judgment is reversed. Appellant(s) to recover costs.

Armstrong, J.

I concur: Turner, P.J.
I concur: Mosk, J. (opinion)

B171570 Michael Flatley
v.
Tyna Robertson

Filed order denying petition for rehearing.

September 21, 2004 (Continued)

DIVISION FIVE (Continued)

B168289 People (Not for Publication)
v.
Armando L. Martinez

The three year sentence enhancement under 12022.7, subdivision (a) is stricken, and defendant is awarded 101 days of presentence conduct credit under section 2933.1. The abstract of judgment is to be modified to reflect a single sentence enhancement, of 25-years-to-life under section 12022.53, subdivision (d), and to reflect 101 days of conduct credit in addition to 674 days of actual custody credit, for a total of 775 days of presentence custody credit. The clerk of the superior court is ordered to prepare an amended abstract of judgment as set forth in this opinion and to forward a copy to the Department of Corrections. In all other respects, the judgment is affirmed.

Mosk, J.

We Concur: Grignon, Acting P. J.
Armstrong, J.

DIVISION SIX

B168417 Hope Ranch Park Homes Association (Not for Publication)
v.
Mariposa Land Development Company, LLC

The judgment is affirmed. Respondent shall recover their costs on appeal.

Perren, J.

We concur: Gilbert, P.J.
 Coffee, J.

B167817 Eddy
 v.
 Fields
 In re The Jack P. Eddy Trust

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

DIVISION SIX (Continued)

B169678 Breault
 v.
 Boyer

Filed order dismissing the appeal as moot (on court's own motion). Appeal (notice of appeal filed 8-28-03) dismissed.

DIVISION SEVEN

B168183 Unity Adjustments, Inc. (Not for Publication)
 v.
 1110 North Hacienda Place

The judgment is affirmed. Respondent(s) to recover costs.

Zelon, J.

We concur: Perluss, P.J.
 Johnson, J.

B170566 People (Not for Publication)
 v.
 Castro

The judgment of the superior court is affirmed in all respects, except that defendant's conviction for receiving stolen property (Pen. Code, § 496d, subd. (a) (count 6) is reversed.

Zelon, J.

We concur: Johnson, Acting P.J.
 Woods, J.

DIVISION SEVEN (Continued)

B166408 Morrin (Certified for Publication)
v.
Rosenthal et al.

The portion of the order denying defendants' SLAPP motions is affirmed. The portion of the order awarding sanctions to plaintiff is reversed and the cause is remanded to the trial court with directions to either enter a new sanctions order in accordance with Code of Civil Procedure sections 425.16, subdivision (c) and 128.5, subdivision (c) or, in the alternative, deny sanctions. Plaintiff is awarded his costs on appeal.

Johnson, Acting P.J.

We concur: Woods, J.
Zelon, J.

B167254 Cheeks (Not for Publication)
v.
California Fair Plan

The judgment is affirmed.

Johnson, Acting P.J.

We concur: Woods, J.
Zelon, J.

B159379 People (Certified for Partial Publication)
v.
Vasquez and Fregoso

The judgments of conviction are affirmed.

Johnson, J.

We concur: Perluss, P.J.
Woods, J.

DIVISION SEVEN (Continued)

B168732 Mandujano (Not for Publication)
 v.
 Makita U.S.A., Inc.

The judgment is reversed. The matter is remanded to the trial court for further proceedings in accord with the views expressed in this opinion. Appellant is entitled to costs on appeal.

Woods, J.

We concur: Perluss, P.J.
 Johnson, J.

B167159 Aldershof (Not for Publication)
 v.
 Aldershof

The order increasing spousal support is vacated, and the matter is remanded to the trial court with directions to issue an order denying the parties' applications to decrease or increase support. The order granting attorney fees is affirmed. Appellant is to bear his own costs on appeal.

Perluss, P.J.

We concur: Woods, J.
 Zelon, J.

B165239 Wright (Not for Publication)
 v.
 Roberts et al.

The judgment is affirmed. Each party to bear their own costs.

Perluss, P.J.

We concur: Woods, J.
 Zelon, J.

September 21, 2004 (Continued)

DIVISION SEVEN (Continued)

B171763 People (Not for Publication)
v.
Waters

The judgment is affirmed.

Perluss, P.J.

We concur: Woods, J.
Zelon, J.

DIVISION EIGHT

B170692 Los Angeles County, D.C.S. (Not for Publication)
v.
Melina C., et al.

The orders of the juvenile court are affirmed.

Boland, J.

We concur: Cooper, P.J.
Rubin, J.

B177294 Alfonso
v.
Dunn-Edwards Corporation et al.

Filed order granting motion to dismiss appeal. Appeal (notice of appeal filed August 9, 2004) dismissed.

DIVISION EIGHT (Continued)

B163045 Rim (Not for Publication)

v.
Porsche Cars North America, Inc., et al.,
Rim,

The judgment in favor of Porsche Cars North America, Inc. and Euro Motors West, Inc., dba Auto Gallery fka Ogner Motorcars, Inc. is reversed and the cause is remanded to the trial court with directions to vacate its order granting the motion for summary judgment and to enter an order denying the motion. The judgment in favor of Chong Charles Rim is affirmed. Rim is to recover his costs in both appeals.

Boland, J.

We concur: Cooper, P.J.
Rubin, J.

B171305 Maicela Zambrana et al. (Not for Publication)

V.
Martina Guilfoil

The order denying the motion to set aside the dismissal is reversed and the cause is remanded to the trial court with directions to vacate the order of dismissal. Upon remand, the trial court may consider imposing a penalty against Zambrano's trial counsel under Code of Civil Procedure section 473, subdivision (c). Each side is to bear its costs on appeal.

Boland, J.

We concur: Cooper, P.J.
Rubin, J.

B158174 Shekhter, et al.

V.
Sunset Masonry & Concrete, Inc., et al.

Filed order denying petition for rehearing.